

INITIATIVE 238

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 238 to the Legislature is a true and correct copy as it was received by this office.

1 AN ACT Relating to protecting the privacy of financial information
2 held by financial institutions and insurance companies; adding a new
3 chapter to Title 19 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** PROTECTING PRIVATE AND PERSONAL INFORMATION.

6 (1) Financial institutions and insurance companies are prohibited from
7 disclosing, selling, and transferring private information. A violation
8 of this act subjects the violator to civil penalties as specified in
9 section 6 of this act, and by rule.

10 (2) A financial institution or insurance company shall not disclose
11 personal information to a third party or affiliate for purposes other
12 than consumer-requested purposes or functional business purposes,
13 unless the consumer:

14 (a) Receives notification of the information to be disclosed;

15 (b) Receives notification of the entity or entities authorized to
16 receive the disclosure of information, and why transfer is needed; and

17 (c) Authorizes the disclosure of the personal information to be
18 disclosed after receiving notification in accordance with (a) and (b)
19 of this subsection.

1 NEW SECTION. **Sec. 2.** RESTRICTIONS ON USE OF CONSUMER INFORMATION.

2 (1) Financial institutions and insurance companies shall, in performing
3 a transaction with a consumer, providing a service for a consumer, or
4 establishing a business relationship with a consumer, only require the
5 consumer to provide information reasonably necessary to perform the
6 transaction, establish the relationship, administer or maintain the
7 business relationship, collect or service a debt, protect against fraud
8 or unauthorized transactions, or comply with applicable law.

9 (2) An insurance company must inform a consumer and receive
10 explicit consent in order to seek a credit report on a consumer. The
11 insurance commissioner of the state of Washington is authorized to
12 enact rules and impose fines relating to insurance companies' use of
13 credit reports within the scope of this chapter.

14 (3) Public information is not within the scope of this chapter.

15 NEW SECTION. **Sec. 3.** DUTIES OF FINANCIAL INSTITUTIONS AND
16 INSURANCE COMPANIES. (1) Every financial institution and insurance
17 company has:

18 (a) An affirmative and continuing obligation to protect the
19 security and confidentiality of customer information;

20 (b) A duty to protect against unauthorized access to or use of
21 customer records or information which could result in monetary harm to
22 customers;

23 (c) A duty to screen third parties, affiliates, employees, and
24 their agents who have access to consumer private and personal
25 information as specified in this chapter.

26 (2) Financial institutions and insurance companies that violate the
27 duties in subsection (1) of this section are subject to civil liability
28 as specified in section 6 of this act, and in rule.

29 NEW SECTION. **Sec. 4.** CONFIDENTIALITY AND SECURITY OF INFORMATION.

30 (1) Third parties or affiliates that obtain information from a
31 financial institution or insurance company may not sell, share, or
32 otherwise transfer the information for any reason other than the
33 original purpose for which the information was sold, shared, or
34 transferred to the third party or affiliate. This information may be
35 transferred back to the source of origin of the information. Any sale
36 or transfer in violation of this chapter is subject to liability under
37 section 6 of this act.

(2) A financial institution or insurance company, before sharing, selling, or otherwise transferring personal information, must obtain a written agreement from the third party or affiliate that requires the third party or affiliate:

(a) To keep the information confidential;

(b) To use the information only for the original purpose for which it has been provided;

(c) To safeguard the information from loss, misuse, theft, unauthorized access, disclosure, defacement, or alteration; and

(d) To provide at least one million dollars of business liability coverage to protect consumers from possible errors and omissions.

(3) The attorney general of the state of Washington is authorized to enact rules, and impose fines up to two million dollars as they relate to financial institutions and insurance companies' use and transfer of private and personal information, and financial institutions and insurance companies complying with their own internal privacy policy statements.

(4) Every financial institution, insurance company, and affiliate must establish reasonable safeguards to ensure the confidentiality and safety of private and personal information.

(5) An agreement or agreements to comply with this section for an affiliate or third party must be made available to the requestor within fourteen business days of a written request or sanctions in section 6 of this act apply.

NEW SECTION. **Sec. 5.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means an entity that controls, is controlled by, or is under common control or common ownership with another entity. Companies that form alliances as a financial services group for purposes of marketing their services and which are located at a common address, have personnel and payroll functions administered through a central office, jointly sponsor one combined employee savings and profit sharing plan, and have centralized data processing, mail service, communications and procurement, or agency agreements are considered under common control and affiliated with each other.

(2) "Consumer" or "customer" means a natural person or his or her legal representative, who is a resident of the state of Washington and

1 who purchases, leases, or otherwise contracts for financial products or
2 services within the state of Washington. "Consumer" or "customer"
3 includes a marital community.

4 (3) "Consumer-requested purpose" means establishing or maintaining
5 a business relationship, completing a transaction, or providing a
6 product or service requested by the consumer.

7 (4) "Financial institution" means (a) any company that engages in
8 financial activities or activities that are incidental or complementary
9 to financial activities, including banks, savings banks, insurers,
10 securities firms, whether chartered, licensed, or regulated by the
11 state or the federal government, or any company regulated by the
12 department of financial institutions; (b) a financial institution as
13 defined in section 527(4) of the Gramm-Leach-Bliley Act (P.L. 106-102)
14 and its implementing regulations as of the effective date of this act;
15 or (c) a bank holding company or financial holding company, as defined
16 in sections 2(a) and 2(p) of the Bank Holding Company Act, as amended
17 as of the effective date of this act, or any subsidiary as defined in
18 section 2(d) of the Bank Holding Company Act, as amended as of the
19 effective date of this act. Credit unions with deposits under eighteen
20 million dollars are not covered by this chapter.

21 (5) "Insurance company" means an entity regulated and authorized to
22 conduct business in the state by the office of the insurance
23 commissioner of the state of Washington.

24 (6) "Functional business purpose" means the use or disclosure of
25 personal information by a financial institution or insurance company to
26 another entity or person to perform services or functions on behalf of
27 the financial institution as part of the financial institution's
28 provision of its products or services to its customers.

29 (7) "Private information" means information such as a consumer's
30 social security number, birthday, genetic identifiers, prescription
31 medication usage, and home or personal phone numbers.

32 (8) "Personal information" means information such as internal
33 account numbers, credit and debit card numbers and associated
34 expiration dates, check, draft, and savings account numbers, the amount
35 of the consumer's deposit account balance or balances, credit card and
36 consumer loan account balances or purchase amounts, transaction
37 histories, significant changes in account balance or debt information,
38 tax identification numbers, state identicard numbers issued by the

1 department of licensing, passwords, and personal identification
2 numbers.

3 (9) "Public information" means a consumer's name, business address,
4 business telephone numbers, residential address, e-mail address, and
5 world wide web usage data.

6 NEW SECTION. **Sec. 6.** CONSUMER PROTECTION RIGHT OF ACTION. (1) A
7 right of action is created for the invasion of financial privacy. The
8 elements of this action are as follows:

9 (a) A relationship between the consumer and the financial
10 institution or insurance company;

11 (b) A duty by the financial institution or insurance company to
12 safeguard the consumer's financial privacy as specified in this
13 chapter;

14 (c) A violation of any of the provisions specified in this chapter,
15 or in rule; and

16 (d) Monetary damages arising from violations.

17 (2) A person found in violation of this chapter must pay damages
18 equal to actual monetary damages, compensation for inconvenience and
19 time lost to remedy the problem, and reasonable attorneys' fees.

20 (3) A court or jury may increase damages for consumers and members
21 of a class action in an amount not to exceed one million dollars upon
22 a demonstration, by a preponderance of the evidence, that a violation
23 of this chapter was done with gross indifference to the consumer or
24 consumers, and monetary damages resulted. Any fines levied by rule or
25 existing legal authority do not exclude the financial privacy right of
26 action.

27 NEW SECTION. **Sec. 7.** Section 1 of this act does not apply to
28 disclosure of personal information under the following circumstances:

29 (1) Disclosure to or at the direction or with the consent of the
30 consumer upon his or her request and upon proper identification;

31 (2) Disclosure required by federal, state, or local laws, or
32 administrative regulations or rules, or other applicable legal
33 requirements;

34 (3) Disclosure made in the course of a properly authorized civil,
35 criminal, or regulatory examination or investigation, or under a search
36 warrant, court order, or subpoena, including an administrative subpoena
37 or other legal process;

1 (4) Disclosure to a third party or an affiliate for the purpose of
2 collecting a debt or a dishonored item, however, the recipient of the
3 information must comply with section 4 of this act;

4 (5) Disclosure to protect the confidentiality or security of the
5 financial institution's records;

6 (6) Disclosure to protect against, investigate, or prevent actual
7 or potential fraud or unauthorized transactions, claims, or other
8 liability;

9 (7) Disclosure as part of a risk control program required by or
10 subject to examination by regulators;

11 (8) Disclosure by or to a consumer reporting agency as specifically
12 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.
13 1681 et seq.);

14 (9) Disclosure of consumer report information between affiliates as
15 specifically permitted under the federal Fair Credit Reporting Act (15
16 U.S.C. Sec. 1681 et seq.), however, the recipient of the information
17 must comply with section 4 of this act;

18 (10) Disclosure for purposes of a proposed or actual
19 securitization, secondary market sale (including sales service rights),
20 or similar transactions related to a consumer-requested purpose;

21 (11) Disclosure to persons holding a legal or beneficial interest
22 relating to the consumer;

23 (12) Disclosure of health care information in compliance with state
24 and federal law;

25 (13) Disclosure to a federal, state, or local agency as required by
26 that agency to fulfill its legal obligations on behalf of a consumer;
27 or

28 (14) Disclosure after the successful merger of companies covered by
29 the scope of the act for functional business purposes.

30 NEW SECTION. **Sec. 8.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 9.** Captions used in this act are not any part
35 of the law.

1 NEW SECTION. **Sec. 10.** This act shall be known as "The People's
2 Financial Privacy Act."

3 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
4 constitute a new chapter in Title 19 RCW.

--- END ---